

02-955

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KD GRAPHICS, INC. and JEFFREY KWAIT	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO. 02-4041
v.	:	
	:	
TROPICAL GRAPHICS, INC. and PAUL HIRST	:	
Defendants.	:	

ORDER

ANDAND NOW, thisAND NOW, this day of AND NOW, this day of , 2002, upon c
inin Opposition to Plaintiffs Motion for Partial Summary Judgment, it is in Opposition to Plaintiffs Motion
Plaintiffs Motion for Partial Summary Judgment is DENIED in its entirety.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DEFENDANTS' MOTION IN OPPOSITION TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

DATE: December 13, 2002

REGER & RIZZO, LLP

Attorney for Defendants

KD GRAPHICS, INC. and JEFFREY KWAIT :
Plaintiffs, :
: CIVIL ACTION NO. 02-4041
v. :
:
:
TROPICAL GRAPHICS, INC. and PAUL HIRST :
Defendants. :

From the beginning of the relationship it was apparent that Kwait was unable to operate the sublimation printer, or otherwise was careless and negligent in doing so. In August, 2001, Tropical offered KD a technical support services contract for the maintenance of the sublimation printer, but Kwait and KD refused to purchase it. Despite refusing to pay for the contract, Kwait refused to pay for the contract.

Kwait admitted to Tropical that, on multiple occasions, he allowed ink to lay in the printer for lengthy periods of time. Indeed, in the early 1990s, Tropical suffered a down turn and that he had left the printer idle with ink in it for over a year. Tropical responded that this practice can damage the printer and sent Kwait a flushing kit on no charge to help foster good will. Kwait also tried to replace the printer against the advice of Tropical, which had recommended that he do so. From August, 2001 to the beginning of April, 2002, Kwait and KD never complained to Tropical about the Artainium ink. To the contrary Kwait and KD placed numerous orders. Tropical continued to work with Kwait and KD despite their orders. Only after Tropical notified Kwait and KD that they ordered additional ink unless they paid their outstanding debt, did Kwait stop ordering ink. Kwait also complained about problems with the printer on the Artainium ink.

Thereafter, Kwait's unreasonable conduct escalated. Tropical threatened to disparage the good name and reputation of the company, produce a negative press release, and sue the company's President, Paul Hirst. Further, for a period of time, Tropical's fax machine was flooded with hundreds of thousands of blank faxes. Tropical stated that Kwait sent these faxes. As a result of using that Kwait's product orders, business and sustained damage to its customer relationships.

Contrary to the facts proffered by Plaintiffs in their Rule 56 Motion for Judgment, genuine issues of material facts exist. Defendants Wells went onto the website for World Wide Ink and Wells went onto the website for World Wide Ink and in this industry. If you deal with this company make sure you do it on a cash only basis money is not safe. money is not safe. money is not safe. KD's name, address, phone and fax numbers were However, no reference was made to Kwai on Defendants assert truth as an absolute defense to Plaintiffs entire case boils down to nothing more bills, or is unable to pay its bills due to a down turn of business, and who has an excuse for its refusal to pay. Additionally, the alleged defamatory statements by an employee, Simon Wells, was simply an expression of negative opinion which is not actionable.

Plaintiff is not entitled to partial summary judgment for business which does not have a personality that is hurt so intangibly to require defamation per se. Plaintiffs cannot prove through Motion for Partial Summary Judgment, that they have suffered any specific damages in their Complaint or thus far in the case. Plaintiffs cannot prove general damages nor special damages which per se.

Likewise, Plaintiffs are not entitled to partial summary claims as the alleged conduct of Plaintiffs support their Motion is ongoing, with depositions yet to be taken. Plaintiffs merely support their Summary Judgment with an unsubstantiated hearsay Affidavit

only mirrors the allegations set forth in Plaintiffs' Complaint. Nowhere is evidence offered to support the elements required to claim defamation or undersupport the elements required to claim defamation. If no genuine material facts exist, the Plaintiffs are not entitled to judgment as a matter of law.

II. ARGUMENT:

A. Standard:

[illegible]

Although it is in the Court's pervue to determine whether theAlthough it is in the Court's pervue
of a defamatory moof a defamatory meaof a defamatory meaning, genuine issues of material fact exist a
Plaintiffs Plaintiffs' defamation claim and whether Plaintiff suffered general or special harm resulting from
Defendants Defendants' conduct. Defendants' employee Simon Wells' opinion that aDe
dodo do business with the Plaintiffs on a cash only basis has substantial truth in that Paragrdo business with t
Tropical'sTropical's counterclaimTropical's counterclaim avers thatTropical's counterclaim avers that KD has
TropicalTropical sufferTropical sufferedTropical suffered damages as a result in the amount of \$1,933.17

Plaintiffs admit that they cannot prove that the damages be determined at trial. Whether Plaintiffs' conduct is a genuine issue of material fact and a defamation claim carries over to its defense of Plaintiffs' Motion for Partial Summary Judgment should be dismissed in its entirety.

B. Plaintiff's Motion for Partial Summary Judgment Plaintiff's Motion for Partial Summary Judgment should be denied as genuine issues of material facts exist for Defendant's assertion of truth as a defense and Plaintiff's inability to prove damages.

In order to prevail on a claimIn order to prevail on a claim for defamation, Plaintiff has the burden of proving:
(1) defamatory character ofthe communication;defamatory character ofthe communication; (2) defamato
to the Plaintiffs; (to the Plaintiffs; (4) the understanding by the recipient of its defamato
understanding by the recipient of it as intended understanding by the recipient of it as intende
resulting to the Plaintiff from its publication;resulting to the Plaintiff from its publication; (7) abuse of a
Pa.C.S.A. §8343(a); Gilbert, 2000 WL807015 *3.

AA statementA statement is defamatory it is tends to harm an individual sA statement is defamatory it is
 oror her in the communor her in the community or detor her in the community or deter third persons from
Synergy,Synergy, Inc. v. Scott-Levin, Inc.,, 51 F. Supp. 2d 570, 580 (E.D. 570, 580 (E.D. PA 1999). It is with
 Court sCourt s perview to determine whetherCourt s perview to determine whether the statements are capable of
Id.,, at 580. The Court should assess The Court should assess the effect that the statement is The Court should a
 impressionimpression it would naturally engendimpression it would naturally engender impression it would
 intendedintended to circulate. Id.,, at 579. A statement which., at 579. A statement which is simply an expressio
 is not defamatory. Id., at 580.

In Pennsylvania, truth is an absolute defense. In Pennsylvania, truth is an absolute defense. In Pennsylvania, truth is an absolute defense. The truth required to avoid liability for defamation is substantial truth. Id., at 3. While there is no set formula, Pennsylvania has determined proof of substantial truth must go to the gist of the statement. Philadelphia Newspapers, Inc., 448 A.2d 6, 15 (Pa. Super. 1982). An issue of fact for the jury exists as to whether the alleged libel as published would have misled the reader from that which the pleaded truth would have produced. Dunlop, 448 A.2d at 15.

Once the Court determines that the requirements under the Pennsylvania Defamation Law, 42 Pa.C.S. § 8343(a)(6), are met, the Court must determine if the defendant has proven special harm. Synergy, 51 F. Supp. 2d at 580. Special harm requires proof of actual or out of pocket loss as a result of the defamation. Id., at 580. Proof of the requirement of proving special damages where the defamation is per se. Clemente v. Espinoza, 749 F. Supp. 672, 677 E.D. Pa. 1990. Whether the words allegedly used by a Defendant were defamatory per se, is also a question for the Court. Id., at 677.

Defamation per se can be either words relating to (1) disease; (2) disease; (3) business misconduct; or (4) serious sexual misconduct. Synergy, Inc., 51 F. Supp. 2d at 580. A statement is defamatory per se as an accusation of business misconduct if it ascribes to another conduct, characteristics or a condition that would reflect unfavorably on the conduct of his lawful business. Espinoza, 749 F. Supp., 749 F. Supp. at 677. It is not a mere general disparagement. Synergy, Inc., 51 F. Supp. 2d at 580. It must be the type that would be particularly harmful to an individual engaged in the Plaintiff's business. Id., at 580 emphasis added. If statements would be particularly harmful to an individual engaged in the Plaintiff's business, they are defamatory per se. Id., at 580 emphasis added. If statements would be particularly harmful to an individual engaged in the Plaintiff's business, they are defamatory per se.

are not defamatory. Id., at 580.

AssumingAssuming arguendo that Defendants alleged posting on the web page does constitute defamationdefamation per se, relieving Plaintiffdefamation per se, relieving Plaintiff of the burden would would still fail because Plaintiffs have not shown general damages; proof that KD s repuwould was actually affected by the slander or that it suffered personal humiliation.was actually affected by the slander. Supp. 2dSupp. 2d at 581. Moreover, the Court inSupp. 2d at 581. Moreover, the Court in Synergy noted that waswas developed out of need to provide a remedy for a person; that his repu his reputat his reputation was byby the very utterance of the defamatory words, even though the personby the very utterance of the defamator pecuniarypecuniary loss. Id., at footnote 9 emphasis added. Moreover, The Court stated that the rationale behindbehind defamation per se loses itsbehind defamation per se loses its force when the victim is a corporation Id., at at footnote 9. In quoting the Honorable John at footnote 9. In quoting the Honorable John G. Hayburn, Inc., 918 F. Supp. 1068 (W.D.Ky 1995) it stated:

TheThe concept [ofThe concept [of defamation per] makesThe concept [of defamation p ofof senseof sense in the personal context. So far asof sense in the personal context. So : cancan tell,can tell, considerably less thought has beenconsiderably less thought toto appto appto applying these concepts to the entirely different settingsetting of business setting of business relsetting of business relationship competition.competition. Businesses do not have personalities thatthat are hurtthat are hurt so intangibly. that are hurt so intangibly. If a business is dam the damage usuallythe damage usually reflected in thethe damage usually reflected in the oror pror pror profits. Therefore, the Courts should be very cautiouscautious about lcautious about labecautionous about labeling as defamati commentscomments made about a corporationcomments made about a corporation orcon Synergy, Inc., 51., 51 F. Supp. 2d at 581, quoting., 51 F. Supp. 2d at 581, quoting Judge Hayburn,Hayburn, II inHayburn, II in CMI, Inc. v. Intoximetris, Inc., 918 F. Supp. 1068, 1084(W.D. Ky. 1995).

The Synergy court continued:

TheThe categories that make up defamationThe categories that make up defamation per se volumesvolumes about to whom the doctrine was intended to applyapply.apply. Criminal offense, lothesome disease, busapply. Criminal offense, lothes

mischief, mischief, serious sexual misconduct, serious sexual misconduct, allegations that would cause enormous humiliation and embarrassment to a human being. A corporation, however, cannot be embarrassed or humiliated. A corporation's reputation would be damaged; an injury that should translate to a pecuniary loss. If a corporation cannot point to a loss of revenues or profits, for what are we compensating it? Should the law allow corporations to avoid special laws taking advantage of an exception to protect individuals, the rule of defamation per se as applied to corporations has outrun its reason.

The Restatement (2d) of Torts, requires that Plaintiff in The Restatement (2d) showing of general damage, i.e. proof of reputational harm. In Synergy, the Court held that the Plaintiff must show general damages where the alleged defamation is per se. Synergy, 51 F. Supp. 2d at 582. The Court reasoned, 51 F. Supp. 2d at 582, Plaintiff did not produce any evidence of general damages, not produce any evidence that Plaintiff's reputation was negatively effected by the alleged defamation. Id., at 582. Therefore, the Court found that Defendants are entitled to summary judgment because there was no genuine issue regarding the essential element of the Plaintiffs' defamation claim. Id., at 582.

In the case of bar, Plaintiffs did not allege facts sufficient to support a claim that the deposition was an essential element of Plaintiff's defamation claim. depositions) genuine issues of material fact exist as to whether Plaintiff's deposition was whatsoever. Therefore, Plaintiff's Motion for Partial Summary Judgment should be denied.

Additionally, Plaintiffs' reliance on Clemente v. Espinoza, 749 F. Supp. 672 (E.D. Va. 1990), in support of its defamation per se claim is misplaced. The Plaintiff in Espinoza was a

lawyer, lawyer, which defendants alleged had connections lawyer, which defendants alleged had connections with clearly an individual to which per se slander applied clearly an individual to which per se slander applied misconduct. The Plaintiff in Espinoza, as a practicing attorney, relies on both his as a practicing attorney, relies on honesty and utmost discretion in business dealings. The reasoning honesty and utmost discretion in business dealings apply to this case as the alleged defamatory statements made by Tropical employee Simon Wells were against KD as a corporation or business entity not an individual. were against KD as a corporation or business entity similarly to the reasoning in Synergy, the Plaintiff as a corporation, the Plaintiff as a corporation embarrassed. Plaintiff embarrassed. Plaintiff cannot establish damage translated to a pecuniary loss.

With regard to the alleged defamatory web site posting itself, it is no more than Tropical's employee's opinion and not actionable. See Beverly Enterprises, Inc. v. Trump (3rd Cir. 1999). Mr. Wells' statement neither impunes the Plaintiff's fitness to conduct its printing operations. This statement is a negative opinion on Plaintiff's reliability. Inc.'s posting, does not in any way discourage business with the payment method be by cash only.

For example, the Court in Beverly Enterprises v. Trump, 182 F.3d 183, 182 F.3d 183 (3rd Cir. 1998) that alleged statements by a Union official that: "you people that alleged statements by a Union official that: company vice president devoted his entire career to busting unions" company vice president that the vice president was part of the World War II generation that the vice president was part of the World War II were not defamatory per se. Trump, 192 Fed. 3d at 191. The Court reasoned that Trump's statements were undoubtedly offensive and distasteful, the law extends to mere insults. Id., at 187. The Court further stated that The Court further stated that in Pennsylvania

insults, and other verbal abuse exists. Id., at 187.

Here, Here, Tropical employee, Simon Wells statement watch Here, Tropical employee, If you deal with If you deal with this company, make sure you do it on a cash only basis your money is not safe is merely is merely an insult or his opinion. As is merely an insult or his opinion. As a result of KD s continued from Tropical after Tropical continued to provide support as a from Tropical after Tropical continued to provide KD, KD, Mr. Wells resorted to simple name calling which is frequently res KD, Mr. Wells resorted to simple without without any real intent to make without any real intent to make a defamatory assertion, and it properly un listeners to amount to nothing more. See Trump, 182 Fed. 3d at 188; See also Restatement (2d) of Torts, §566, comment E, (1977). As defamation does no, §566, comment E, (1977). As defamation d Plaintiffs Motion for Partial Summary Judgment should be denied.

Additionally, Defendants in this matter assert that KD's failure to pay Tropical Artainium Ink and bulk delivery system, and KD's failure to pay Tropical Graphics, is in the amount of \$1,933.17 plus interest, for which KD is liable. Defendants' Amended Counterclaims, attached as Exhibit 2).

Summary Judgment failed to allege any facts
 Plaintiffs have not produced bills, cancelled checks, or other evidence of payment
 Defendants contention that KD still owed Tropical money for its far
 bulk delivery system, and a graphics project completed by Tropical. Moreover, KD raises
 general issue of material fact in response to Tropical's Request for Admissions #1 which states:

Admit that KD owes Tropical Graphics a
 \$1,933.17 plus interest for ink a
 system that they purchased from Tropical Graphics,
 as well as a graphics project completed by T
 Graphics for KD Graphics.

(See Defendants first set of Request for Admissions directed to Pl
 KD's response raises a genuine issue of material fact through its denial stating:

Denied. The bulk ink system was paid for i
 KD was billed for \$495.00 on September 24, 2001.
 On December 28, 2002, KD paid that i
 Denied that KD owes any money to Tropical si
 Tropical Graphics employed fraud to sell ink
 Tropical Graphics represented i
 manufactured by BASF to KD. KD reasonably
 relied on these representations paid since therelied
 was made under fraudulent pretenses, was made under fraudulent pretenses, KD w
 no obligation to pay for no obligation to pay for the ink that was so
 through fraud.

(See Plaintiffs Answers to Defendants Request for Admissions attached as Exhibit 4).

As stated above, a genuine issue of material fact also exists with reg
 damages. Defendants Interrogatory #12 requests that Plaintiff
 claim in this litigation and identify all fact witnesses and documents that support your claim for
 damages. (See Defendants first set of Interrogatories directed
 attached as Exhibit 5). In response Plaintiffs state:

Damages will be fully identified in a damage report prepared by an economic expert retained by Plaintiffs. At this time, Plaintiffs are engaged in discovery and developing information which will be used to properly calculate Plaintiffs damages. Such a report will be prepared by an economic expert retained by Plaintiffs in accordance with a

(See Plaintiffs Answers to Defendants Inter(See Plain
#13),attached#13),attached as Exhibit 6). Additionally, Plaintiffs were#13),attached as Exhibit 6). Additionally
any customer that theyany customerthat they lost as a result of Defendants any customer that they lost as a re
Defendants state:

AdmittedAdmitted that Plaintiffs cannot cAdmitted that Plaintiffs cannot cuAdmitt
ccustomerscustomers that were lost as a result of defamatocustomers that were lost a
statementsstatements made by Defendants. Hstatements made by Defendants. Howe
thethe fact thatthe fact that statements were made over thethe fact that statements were ma
itit is very difficult to identifyit is very difficult to identify potential customers who
maymay have decidedmay have decided against contacting KD after seeing
the website.

(See Exhibit 4, paragraph 8). Regarding any
defamatory statements, Plaintiffs continued stating:

AAAdmittedAdmitted that Plaintiffs cannot identify any customerscustomers or specificcustomers or specific projects that we lost as acustomers o ofof defamatoof defamatoryof defamatory statements made by Defendants. However,However, due to the factHowever, due to the fact that statementsHowever, due overover theover the inover the internet, it is very difficult to identify potentialpotential customers deciding againstpotential customers deciding against contact after seeing the website.

(See Exhibit 4, paragraph 9).

The above indicates that not only do genuine issues of material fact exist, but also that the Court's grant of summary judgment is improper as Plaintiffs' Motion for summary judgment is based on incomplete discovery and, therefore, Plaintiffs' Motion has no basis.

C. Plaintiffs Motion for Partial Summary Judgment for Defendants Motion

the Lanham Act should be deniedthe Lanham Act should be deniedthe Lanham Act s

constitutecommercial speech or advertising and Plaintiff haconstitutecommercial sp

it suffered actual or even a likelihood of damages.

Plaintiff asserts a cause of action for violation of Section 1125(a). The statute states in relative part:

Any person who, on or in connection with Any person who, on or in connection with Any person who, on or in connection with
or services, or container or services, or container for or services, or container for goods or services,
in commerce any word, term name, symbol, device, or any combination thereof, or any false
designation of origin, false or misleading designation of origin, or false or misleading representation of fact, or
of fact, or false or misleading representation of fact, or false or misleading representation of fact, or
which... which... in commercial advertising or promotion
represents the nature, characteristics, qualities or geographical origin of his goods, services, or commercial activities, shall be
liable in a civil action by any person who believes that he or she is or likely to be damaged by such act.

15 USCA§1125(a)(1)(B).

The Court of Appeals for the Third Circuit has interpreted the Lanham Act to require a Plaintiff to show that: (1) the defendant has made false or misleading statements about its product or services; (2) there is actual deception or at least a tendency to deceive a substantial portion of the intended audience; (3) the deception is material and that substantial portion of the audience is likely to be influenced by the deception; (4) that the advertised goods or services are likely to influence purchasing decisions; (5) that there is a likelihood of injury to the Plaintiff in terms of declining sales or other financial harm; and (6) that the defendant has acted with some degree of intent. US Healthcare, Inc. v. Blue Cross of Greater Phila., 89 F. 2d 1924, 1922-23 (3d Cir. 1924).

To show entitlement to monetary damages under Section 43(a), the Plaintiff must show that the defendant's conduct caused actual damages rather than a mere tendency. Synergy, Inc., 51 F. Supp. 2d at 575.

Commercial advertising or promotion for the purposes Commercial advertising or promotion for the purposes
commercial speech; (2) by defendant in commercial speech; (2) by defendant in commercial competition
to influence customers to buy Defendant's products; (4)
relevant purchasing in public to constitute advertising or relevant purchasing in public to constitute advertising or relevant
5151 F. Supp. 2d at 576; J&M Turner, Inc. v. Applied Bolting Tec
WL83766 (E.D. Pa. 1997). In determining whether speech is commercial, courts look to the
definition of commercial speech: "speech which does no more than propose a commercial
transaction." Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.,
762 U.S. 762 (1976); See also, Gordon and Breach Science Publishers v. American Library Association,
F. Supp. 1521 (S.D. NY. 1994).

For example, the Court in Licata & Company v. Goldberg, 812 F. Supp. 403 (S.D. New York, 1993) held that former employees' statements to the public, which no longer served its customers' needs and was not qualified, constituted deceptive commercial advertising within the meaning of the Lanham Act. In its decision, the Court reasoned that the Lanham Act's antideception provision (15 U.S.C. § 1125(a)) is designated among other things to bar misleading commercial statements that are trivialized if it were applied to statements in all conversations to an individual customer concerning matters which an ordinary listener would recognize as personal representations of hard to definable facts such as product quality. The Synergy court stated that: as distinct from commercial disparagement, the Lanham Act is not a cause of action for malicious disparagement or misrepresentation and advertising about a particular product.

51 F. Supp. 2d at 578; *See also*, US Healthcare, 898 F.2d at 921.

In the case at bar, the posting by Simon Wells was neither advertising or promotion in the case at bar, the the pervue of the Lanham Act. the pervue of the Lanham Act. The post the pervue of the Lanham Act influence customers to rebuff Plaintiffs' services and use Defendants' influence customers to rebuff Plaintiffs' anyone reading Mr. Wells' web post anyone reading Mr. Wells' web posting w anyone reading Mr. Wells' payment history to its suppliers.

Moreover, Mr. Wells' posting is not commercial. Applying the definition from Virginia Pharmacy Board, Mr. Wells' statement does not propose a commercial transaction. Again, it merely reflects his opinion as to whether or not there are transactions with Plaintiffs as to their payment, or lack thereof, or whether the statement does not tell customers not to do business with Plaintiffs or potential suppliers as to how to do business with the Plaintiffs.

Plaintiff's reliance on National Artist Management Company v. Weaving, 769 F. Supp. 2d 1224 (S.D. NY. 1991) (NAMCO) is misplaced and not applicable to the case. NAMCO, a former officer of a talent booking company for theatrical productions had, a former owner of the company, disparaging phone calls to the plaintiff's customers. NAMCO was attempting to establish a rival company and was directing her efforts to establish a rival company and customer base. Id., at 1235. The Court concluded that the plaintiff's claim under the Lanham Act because of the context of the defendant's actions to establish a rival business by undermining plaintiff's customer base. Id., at 1235.

To the contrary in the instant matter, Mr. Wells' opinion is not directed at the customers or is Tropical attempting to establish a rival company. Tropical is not attempting to establish a rival company as a result of his frustration from dealing with Plaintiffs' conduct.

disparagement.

Finally, Finally, as discussed supra there is an issue of material fact as to whether the evidence establishes actual damage or even a likelihood of injury to Plaintiffs as a result of Mr. Wells' opinion. The Court merely has to look to Plaintiffs' Partial Summary Judgment to see this. Plaintiffs were allowed to prove this essential element, which is a contested issue of material fact. As a result, Plaintiffs' Motion for Partial Summary Judgment must entirely fail.

III. CONCLUSION:

Based on the foregoing, Defendants assert that granting Plaintiffs' Motion for Partial Summary Judgment would preclude granting Plaintiffs' Motion for Summary Judgment. Defendants respectfully request that this Honorable Court deny Plaintiffs' Motion for Summary Judgment in its entirety and enter the proposed Order attached hereto.

Respectfully submitted,

REGER & RIZZO, LLP

By: _____

Jason J. Sweet, Esquire
Attorney for Defendants

02-955

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KD GRAPHICS, INC. and JEFFREY KWAIT	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO. 02-4041
v.	:	
	:	
TROPICAL GRAPHICS, INC. and PAUL HIRST	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I, I, I, JASON J. I, JASON J. SWEET, ESQUIRE, hereby certify that I served a true and correct copy
Defendants Defendants Memorandum in Opposition to Plaintiffs Defendants Memorandum in Opposition to
the following by mailing same, first class, postage prepaid on December 13, 2002:

Andrew Lapat, Esquire
STEIN AND SILVERMAN, P.C.
230 South Broad Street, 18th Floor
Philadelphia, Pa 19102

By: _____
Jason J. Sweet, Esquire